IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7751 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRASINH MAVUBHA JADEJA & others
Versus
STATE OF GUJARAT & others

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Appearance :

Mr. C.B. Dastoor for the petitioners

Mr. Maulik Nanavati, AGP, for the respondents.

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 27/06/2007

ORAL JUDGMENT

1 Heard learned advocates for the parties.

2 At the outset, leaned counsel for the petitioners has restricted his prayer to the limited extent that, since all the petitioners were employed through the Employment Exchange in accordance with the provision of Section 4 of the Employment Exchanges [Compulsory Notification of Vacancies) Act, 1959, and rendered service as daily wagers with respondent No.3-Government Dental College & Hospital, Jamnagar, for more than 16 to 17 years, the question of regularisation of the services of the petitioners is required to be considered by the State Government on merits in light of the principles enunciated by the Apex Court in paragraph 53 of the judgment reported in [2006] 4 SCC 1 [Secretary, State of Karnataka vs. Umadevi]. He has also submitted that, in different departments, sanctioned posts are available.

3 Learned Assistant Government Pleader submits that no benefit can be granted to the petitioners contrary to the law laid down by the Apex Court in Umadevi [supra].

4 On perusal of the record of the case, I am quite conscious of the fact that no direction, contrary to the law laid down by the Apex Court in Umadevi [supra], can be issued by this Court in exercise of powers under Article 226 of the Constitution of India. However, in paragraph 53 of the said judgment, the Apex Court has considered tenure of more than ten years service rendered by employees to be considered in a particular manner and, in the facts of the present case, when the petitioners were employed through the Employment Exchange and, as stated by learned counsel for the petitioners, they have put in more than 16 years of service, the observations of the Apex Court in paragraph 53 are squarely applicable to the facts of the present case. Paragraph 53 reads as under:

> "53. One aspect needs to be clarified. There may be cases where irregular appointments [not illegal appointments] as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly

> sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

5 In view of the above, the State Government is directed to consider the case of the petitioners as per the law laid down by the Apex Court in Umadevi [supra] and will pass appropriate orders in accordance with law as expeditiously as possible. It will be open for the petitioners to make representation with regard to the grievances agitated in this petition and the same will also be considered in accordance with law.

6 This petition stands disposed of. Rule is discharged with no order as to costs.

(ANANT S. DAVE, J.)

(swamy)